



Office of the Attorney General

State of Texas

August 11, 1998

DAN MORALES

ATTORNEY GENERAL

Ms. Mary Andrews
Director of Civil Service
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR98-1901

Dear Ms. Andrews:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 117777.

The City of Lubbock (the "city") received a request for credit history screening information concerning applicants who have passed the Lubbock Police Academy's background check for the last four recruiting classes. You have released some of the requested information. You contend that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If these documents are part of the section 143.089(g) files, the city must withhold these documents. If the documents are placed in the personnel files maintained by the civil service commission under section 143.089(a), then the documents must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 (1990) at 6 (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

We now address your other claims in the event that the documents submitted to this office for review are not part of the police officer's section 143.089(g) files. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.² *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (federal tax Form W-4, Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We have marked the information excepted by common-law privacy as encompassed by sections 552.101 and 552.102.

Next, you assert that information in personnel evaluation forms are excepted from public disclosure by section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The submitted information concerns a personnel matter, and therefore, you may not withhold the information under section 552.111.

If the applicants are now peace officers, then the information includes information excepted from public disclosure by section 552.117 of the Government Code. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information concerning whether the peace officer has family members. Thus, you must withhold such information under section 552.117(2).

Lastly, federal law may prohibit disclosure of the social security numbers contained in the submitted documents. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 117777

Enclosures: Marked documents

cc: Mr. Steve Lair
3707 45th Street
Lubbock, Texas 79413
(w/o enclosures)